IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.335 OF 2006
WITH
CIVIL APPLICATION NO.420 OF 2006

M/s.Nirmal Milk Products. ..Petitioner.

V/s.

M/s.Karnik & Associates. ..Respondent.

Mr.R.A.Thorat i/b.S.M.Kazi & S.E.Kazi for petitioner.

Mr.Sanjiv A.Sawant for respondent.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 7, 2006.

P.C. :

1. Heard counsel for the parties.

2. I find no substance in this appeal, which is directed against the order passed by the first Appellate court remanding the matter back to the Trial court in view of the observations made in the impugned Judgment. No fault can be found with the view taken by the appellate Court that the issue of jurisdiction goes to the root of the matter. That issue was specifically raised in written statement in paragraph-13.

3. Counsel for the appellant however, submits

that the respondent never insisted for framing of that issue. Even if the respondent did not insist that issue, the trial Court was obliged to frame that issue, as that issue goes to the root of the matter.

4. Viewed thus, no fault can be found with the conclusion reached by the Court below that the matter will have to be re-examined by the trial Court in view of the observations made in the impugned Judgment. Hence dismissed.

5. The trial Court is further directed to expedite the matter and the suit to be finally disposed of by end of March, 2007.

6. Civil application disposed of accordingly.